

REMARKS

Status of the Claims

Upon entry of the instant Amendment, claims 1 and 4-14 are presently under consideration in the present application.

By the present Amendment, claim 1 has been amended to clarify a feature seen in Figs. 1 and 2 of the present application. Claim 14 has been added to the present application based on the disclosures at page 5, lines 32-36 and Fig. 5 of the present specification.

The present amendments to the claims do not introduce new matter into the application as originally filed and furthermore, the present Amendment does not raise new issues or require a further search on the Examiner's part.

Allowable Subject Matter

The Applicants appreciate the Examiner's indication that claims 11 and 12 contain allowable subject matter. However, the Applicants respectfully submit that claim 1 as well as all the claims dependent herein are also allowable over the prior art relied upon by the Examiner.

Rejections under 35 U.S.C. § 103

Claims 1, 4, 5 and 13 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Elias US '126 (US 4,209,126) in view of Smith US '084 (US 4,171,084) and Knudsen US '941 (US 4,044,941).

Claim 6 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Elias US '126 in view of Smith US '084, Knudsen US '941 and Maruhashi et al. US '366 (US 4,551,366).

Claim 7 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Elias US '126 in view of Smith US '084 and Knudsen US '941.

Claim 8 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Elias US '126 in view of Smith US '084, Knudsen US '941 and Hawley US '132 (US 3,095,132).

Claims 1, 4, 5, 7, 9, 10 and 13 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Collins UK '099 (UK 2,236,099) in view of Kleemola US '120 (US 5,236,120).

Claim 6 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Collins UK '099 in view of Kleemola US '120 and Maruhashi et al. US '366.

Claim 8 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Collins UK '099 in view of Kleemola US '120 and Hawley US '132.

These rejections are respectfully traversed.

Nonobviousness over the Combination of Cited References

As recited in amended claim 1, in the claimed cup package of the present invention, the mantle (3) is bent sharply downward at the mouth (4) of the cup to form a collar (5) diverging from the mantle. In view of the present Amendment, the present invention is further defined over the combination of the cited references relied upon by the Examiner.

None of Elias US '126, Smith US '084 and Knudsen US '941 discloses a cup having the claimed structures of the collar, the lid and the rim. It is respectfully submitted that the interpretation of Elias US '126 in paragraph 2 of the Office Action is selective and biased when compared to the present invention. (In determining the differences between the prior art and the claims, the question under 35 U.S.C. 103 is not whether the differences themselves would have

been obvious, but whether the claimed invention as a whole would have been obvious. *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 218 USPQ 871 (Fed. Cir. 1983); *Schenck v. Nortron Corp.*, 713 F.2d 782, 218 USPQ 698 (Fed. Cir. 1983). The Examiner must interpret the reference as a whole and cannot pick and choose only those selective portions of the reference which support the Examiner's position. *In re Fine*, 837 F.2d 1071, 1075 (Fed. Cir. 1988)). Even if the "collar" (i.e., a mouth roll) of Elias US '126 is outwardly and downwardly formed, the Examiner has overlooked the claimed feature of the present invention, i.e., "*a collar (5) diverging from the mantle.*" Unlike the present invention, the mouth roll of Elias US '126 is lying tightly in contact with the mantle. Thus, even if Elias US '126, Knudsen US '941 and Smith US '084 are combined, a *prima facie* case of obviousness is not established.

Further, in "*Response to Arguments*" at paragraph 10 of the Office Action, Fig. 9 of Elias US '126 is referred to so as to alleged that Elias US '126 discloses the claimed feature "*a cup collar is enlarged conically downwardly.*" However, Applicants respectfully disagree with this interpretation. It is submitted that the mouth roll of Elias US '126 is not conical but merely has a rounded configuration.

In view of the amendment to claim 1, wherein the mantle of the cup is bent sharply downward to form a conically enlarged collar, further distinguishes the present invention from the Elias US '126, Smith US '084 and Knudsen US '941 references. Each one of the collars or mouth rolls of Elias US '126, Smith US '084 and Knudsen US '941 has a mere rounded configuration (not a conical shape). In contrast, the present invention has a sharp fold in the fiber-based material, where the conical cup mantle turns sharply to form the conical collar, so that the mantle and the collar, due to their diverging conical shape, diverge from each other (e.g., see Fig. 1).

It is alleged at paragraph 6 of the Office Action that substituting a fiber-based material for molded plastic would be obvious in view of Collins UK '099 and Kleemola US '120. However, Applicants respectfully disagree with this allegation. Workability of the respective materials is more significant in the present technology than the ready availability of fiber-based materials. The techniques of forming articles from fiber-based materials, such as paper or board and plastics, are entirely different from the thermoforming techniques. Collins UK '099 merely teaches the making of articles by thermoforming, which does not work for paper or board articles. Thus, Collins UK '099 does not provide one skilled in the art with any motivation or suggestion to arrive at the present inventors. In sum, Collins UK '099 is fundamentally irrelevant to the present invention.

Furthermore, Applicants respectfully disagree with the allegation that Collins UK '099 is analogous art to the present invention as set forth in paragraph 10 of the Office Action. The issue is not simply a matter of method claims vs product claims, or vice versa. Claim 1 defines *"a cup package made of a fibre-based material,"* which limits the present invention to the domain of such materials, particularly paper and board cups, containers, *etc.* Such paper and board articles (as a product) are a well-defined field of art in their own right. Plastics and articles made thereof are an essentially different field of art from Collins UK '099 (*i.e.*, thermoformed container). Thus, it is respectfully submitted that the Examiner's view that the difference between fiber-based materials and plastics would not matter, is unfounded.

The claimed feature that the conically enlarging mantle is sharply bent to a conically enlarging collar, is not disclosed or suggested by Collins UK '099, nor disclosed or suggested by Kleemola US '120. Since in Collins UK '099, the upward mantle (3) and the downward collar (14) of the cup are bridged by a flat annular rim (6), the structure of Collins UK '099 is quite

different from the present invention (e.g., see Fig. 1 of Collins UK '099). Even if such a configuration can be easily produced by thermoforming, as taught by Collins UK '099, a skilled person in the art would not contemplate making such a product from a fibrous material. The sharp fold or crease between the mantle and the collar, instead of the flat rim, is not merely a difference between the present invention and Collins UK '099 but represents the essential difference between the respective fields of paper and the board articles of the present invention and the thermoformed plastics articles of Collins UK '099.

Furthermore, the cup according to the present invention can be made from a single paper or board blank by creasing, bending into conical shape and sizing along a single seam line, followed by adding a bottom part in the known manner. It is unimaginable as to what kind of creasing and bending operations might yield the container as shown by Collins UK '099. In other words, Collins UK '099 is completely silent regarding a manner for attaining the claimed structure.

Kleemola US '120 relates to a paperboard container, which is basically cylindrical rather than conical, and has a narrow conical top part, tapering, not upwardly enlarging, towards the mouth of the container, and a conical collar lying tightly against the conically tapering part of the container (e.g., Fig. 5 of Kleemola US '120). The conical parts are produced by means of shaping tools (16, 17), performing a brutish pressing operation, which the board can only conform to within a narrow zone, as seen in Figs. 1-3 of Kleemola US '120. This does not suggest the claimed cup of the present invention, where the collar is formed by a simple creasing operation which does not limit the width of the collar and allows distancing of the heat seal with the lid as desired by the present invention. In other words, Kleemola US '120 also fails to disclose or suggest how to attain the claimed structure.

As explained above, none of the cited references discloses or suggests the claimed structure (*e.g.*, a mantle bent sharply downward at the mouth of the cup to form a collar diverging from the mantle). Thus, a *prima facie* case of obviousness is not established based on the combination of the cited references. Likewise, there is no rationale and/or reasonable expectation of success based on the combination of the cited references, by which one skilled in the art could arrive at the present invention as claimed. Thus, it is respectfully submitted that the present invention as defined by the claims of the present application, is not obvious over the combination of the cited references.

Based on the foregoing considerations, Applicants respectfully request that the Examiner withdraw the rejections and issue a Notice of Allowance. In the event that the proposed amendment does not place the present application into condition for allowance, entry thereof is respectfully requested as placing the present application into better condition for appeal.

Conclusion

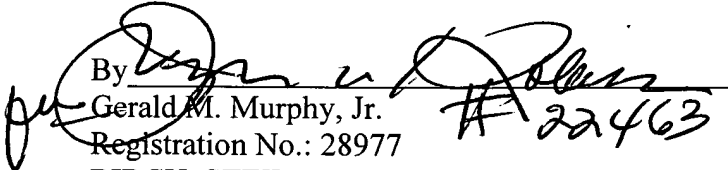
All of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding rejections and that they be withdrawn. It is believed that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Toyohiko Konno, Registration No. 68,859, at the telephone number of the undersigned below to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Director is hereby authorized in this, concurrent, and future replies to charge any fees required during the pendency of the above-identified application or credit any overpayment to Deposit Account No. 02-2448.

Dated: December 5, 2011

Respectfully submitted,

By 
Gerald M. Murphy, Jr.
Registration No.: 28977
BIRCH, STEWART, KOLASCH & BIRCH, LLP
8110 Gatehouse Road, Suite 100 East
P.O. Box 747
Falls Church, VA 22040-0747
703-205-8000

**JOSEPH A. KOLASCH
REG. NO. 22,463**